

BOOK REVIEWS

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LOCATING LAND LAW WITHIN A PROPERTY LAW CONTEXT – AGAIN

Property Law by ROGER J. SMITH, London, Longman, 2003, lxviii + 617 pp., Paperback, £29.99, ISBN 0 582-473241

The first edition of *Property Law* was published in 1996. This review is of the fourth edition published in 2003. The focus of the book is land law and it is indicative of the pace of change, in what was once regarded as a reassuringly stable subject, that this generational period of around two years between editions has been largely driven by legal developments. When the first edition went to press the Landlord and Tenant (Covenants) Act 1995 had barely come into force (commencement was on 1 January 1996); the Trusts of Land and Appointment of Trustees Act 1996 was still a bill; the Commonhold and Leasehold Reform Act 2002 was still very much a recommendation with merit but no realistic chance of enactment in the near future; and the Land Registration Act 2002 was not even a twinkle in its draftsman's eye. Together references to these four Acts account for well over a third of entries in the Table of Statutes in the book (just under four pages out of nine).

The first edition of the book was a welcome attempt to situate land law within the context of the general law of property. The fourth edition remains, rightly in this reviewer's opinion, committed to the appropriateness and educational efficiency of viewing land law as a species of property law; rather than seeing the subject as a unique product of historical misadventure, or as the mystery that lies behind the practice of the professional conveyancer. Both the structure of the book and its length have remained remarkably stable across editions. This is a consistency that irresistibly suggests a structural strength and a remarkable discipline in jettisoning material that is no longer central to the book's concerns.

Property Law is divided into four sections: "Introduction", "General Principles", "Rights to Enjoy Land", and "Other Interests in Land". It is within the first two sections, which comprise nearly half the book, that the structurally distinctive features of the book are most evident. Although the treatment of land law is given predominance, the exposition and analysis is framed by a consideration of the nature of property law, and the sections contain a substantial consideration of the law of personal property. This allows the treatment of land law to benefit from an analytically more coherent treatment and allows for a functional approach to criticism.

The impact of this approach on a land law text is perhaps most strikingly illustrated by a consideration of what is not covered in detail by the book. Both the law of unregistered conveyancing and the old law of registered land, contained in the Land Registration Act 1925 and subsequent cases, are almost completely eclipsed by the

treatment of the new law of registered land enacted by the Land Registration Act 2002. The book does not attempt to provide a complete account of the law that may impact upon a conveyancer in his or her career. *Property Law* has more citations of the Human Rights Act 1998 than it has citations of the Land Charges Act 1972. The book seeks primarily to give an account of the contemporary solutions offered by the law to age-old problems of property law.

The book is meticulous in its treatment of the subjects it covers in detail. Legislation and case law are given both full exposition and critical consideration. Reports of the Law Commission are taken fully into account and there is ample and informed treatment of academic publications. Where the law is doubtful the treatment makes this clear. However, where expressions of doubt seem to be fanciful, ill-judged, or subsequently resolved, this too is made apparent. Roger Smith has been one of the more impressive commentators on land law, especially the law of registered land, for many years.¹ His willingness to pose searching questions remains, and is evidenced on many occasions in this book.

The style of writing is terse, and repetition is avoided by internal cross-referencing. On occasion the exposition of the law becomes more magisterial than explanatory, which calls for care in a reader who is still uncertain of the technical terminology of the law. However, the law is treated at different levels of detail in different places within the book, and the key to a successful use of the book as a text lies in a willingness to use it actively rather than to expect it to open at the appropriate page for the reader. For example, registration is considered in chapters four, ten, and 11. Within chapter 11 there is an overview at the beginning and end of the chapter. Diving into the middle of chapter 11 would almost certainly produce little understanding in someone unfamiliar with the law. On the other hand for somebody with knowledge of the subject it is rare not to find material of an interesting and stimulating nature on each dip into the book.

The fourth edition contains a very full account of the new law of the Land Registration Act 2002. As one would expect from the author the treatment is far more than simply a description of the Act. When considering the proposed move to electronic conveyancing, the threat to the security of registered title posed by the deemed authority given to those with network access agreements is identified (p. 105). This is not the threat of computer misuse by third parties: this is the statutory authority that will allow fraudulently inclined professionals to dispose of the property of proprietors of registered land. When considering the changes made to overriding interests, the danger to purchasers of a tenant under an overriding lease who is not in possession is identified (p. 243) and therefore there is a recognition of the continuing need to ask occupiers about rent payments, despite the exclusion of those in receipt of rents and profits from actual occupation. When assessing the success of land registration the fact that it has not actually reduced conveyancing costs significantly (nor improved the speed of transactions) is faced, and considered (pp. 272–274). These examples illustrate an intelligence at work that is not content with grasping and explaining how law is meant to work, but asks how law reform will work in our less than perfect world.

The treatment of the distinction between personal claims against those who acquire registered land and the survival of property rights enforceable against those who acquire registered land is very valuable (pp. 237–239). The explanation of the new law

¹ e.g. (1977) 93 L.Q.R. 541.

of commonhold land is clear and useful (pp. 535–538). The book is a stimulating, up to date, scholarly, and clearly written text that repays the attention it demands of readers.

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